IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1108 of 2001

IN

SPECIAL CRIMINAL APPLICATION NO. 642 OF 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAILESHBHAI ALIAS LALABHAI LASSIWALO DATARAM YADAV
Versus
STATE OF GUJARAT

Appearance:
1. LETTERS PATENT APPEAL No. 1108 of 2001
MR MA KHARADI for Appellant
MS HARSHA DEVANI, ADDL. PUBLIC PROSECUTOR for Respondents

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 28/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. The appellant challenges the judgement and order dated 14-9-2001 of the learned Single Judge in Special Criminal Application No. 642 of 2001 rejecting the petition in which the appellant had challenged the order of the externing authority by which he was required to furnish surety for good behaviour and the appellate order confirming the order of the externing authority.

2. A show cause notice was issued on the appellant in accordance with the provisions of section 59 read with section 56 of the Bombay Police Act, 1951 alleging that his acts were causing alarm danger or harm to other persons and their properties, and that there were reasonable grounds for believing that the appellant was engaged in the commission of offences mentioned in the said notice dated 12-2-2001. It was alleged that the appellant was a headstrong person and that he was selling illicit liquor and further that, he was quarrelling with members of public. Three prohibition offences registered against him were mentioned in the notice and he was asked to show cause as to why he should not be externed from the areas mentioned in the notice. After giving an opportunity of hearing to the appellant, the Sub Divisional Magistrate, Nadiad came to a finding that there were no sufficient grounds for externing the appellant. In the final order, it was stated that there were no reasonable grounds for believing that the activities of the appellant were causing or were calculated to cause alarm, danger or harm to any person or property. The showcause notice dated 12-2-2001 issued under section 59 read with section 56 of the said Act was, therefore, specifically withdrawn as stated in that order. However, observing that, in order to ensure that the appellant does not indulge in anti-social activities, he was required to execute a personal bond in the sum of Rs.25,000=00 and also furnish two sureties for the like amount for a period of two years.

3. The order of the Sub Divisional Magistrate requiring the appellant to execute a personal bond and also to furnish sureties in the sum of Rs.25,000=00 for a period of two years was challenged by the appellant under section 60 of the said Act. By a cursory appellate order, without noticing the nature of the order in appeal, the appellate authority dismissed the present appellant's appeal observing that the externment order of the Sub Divisional Magistrate dated 9-5-2001 (though he was never externed by that order as the notice of

externment was in fact withdrawn) was confirmed. Even in the body of the order, there was no reference to the fact that the externing authority had found no substance in the allegations and had withdrawn the show cause notice observing that there was no reason to believe that the activities of the appellant were causing or were calculated to cause alarm danger or harm to any person or property. Since the present appellant's appeal was dismissed, the order of the Sub Divisional magistrate came to be confirmed and was challenged by the appellant before this Court. The learned Single Judge upheld the preliminary objection against the maintainability of the petition raised on the ground that the order passed by the externing authority requiring the appellant to furnish personal bond of Rs.25,000=00 with two sureties was not complied with. The learned Single Judge observed that a petition under Article 226 of the Constitution was a matter relating to a discretionary relief and since the petitioner did not comply with the order passed by the externing authority and confirmed by the appellate authority, the petition was not maintainable. This is how the petition came to be rejected.

4. The appellant had in his petition challenged the very order requiring him to execute a personal bond and furnish two sureties in the sum of Rs.25,000=00. Since the validity of that order was challenged, there was no question of any prior compliance of the order in context of the maintainability of the petition in which the order was challenged.

5. From the facts of the present case, it undisputedly transpires that the externing authority, not finding any reasonable ground for forming the requisite belief, had withdrawn the show cause notice which was issued under section 59 read with section 56 of the said Act. Since the show cause notice was withdrawn, there could remain no basis for issuing any order binding the appellant with the condition of furnishing a bond in the sum of Rs.25,000=00 and producing sureties for the like amount. Since the show cause notice was withdrawn, even if the authority was empowered to make any order other than an externment order under section 56 of the said Act, there did not remain any basis for issuing any such type of order. Therefore, the decision of this Court in Sabbirmiya Allarakha Saiyed v. Commissioner of Police, reported in XXXVI(2) GLR 1430 cannot assist the respondents. That was a case in which the authority had passed an externment order under section 56 of the said Act and this Court, partly allowing the petition, modified the externment order to the extent indicated in

the judgement and remanded the matter to the externing authority for issuing appropriate order. Since in the present case the show cause notice itself was withdrawn, we are not expressing any opinion on the question as to what types of orders other than externment orders may be passed under section 56 of the said Act.

6. For the reasons indicated above, we allow the appeal and set aside the impugned externment order and the impugned appellate order confirming that order, as also the order of the learned Single Judge.

NOVEMBER 28, 2001 [R.K.ABICHANDANI, J.]

[K.M.MEHTA, J.]

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